STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EA11GB-67396

JESSICA HOBER,	)	
	)	
Complainant,	)	
	)	
v.	)	**Administrative Action**
	)	**FINDING OF PROBABLE CAUSE**
NEUROLOGY INSTITUTE OF SOUTH JERSEY,	)	
	)	
	)	
Respondent.		

On February 17, 2016, Jessica Hober (Complainant), filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). The complaint was subsequently transferred to the New Jersey Division on Civil Rights (DCR) after EEOC determined that it did not have jurisdiction. The complaint alleges that Complainant's former employer, Neurology Institute of South Jersey (Respondent), subjected Complainant to differential treatment and discharged her because of pregnancy in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a medical practice, specializing in neurological medicine. Respondent treats patients and administers Electromyography tests (EMGs) and Electroencephalogram tests (EEGs). Dr. Jeffrey Boxman, the only physician at the practice, cares for patients, and writes narrative reports for law offices and independent medical exams for accident cases. Respondent is located in Galloway Township, New Jersey. Complainant worked for Respondent as a Family Nurse Practitioner from March 16, 2015 until she was discharged -soon after she notified Respondent that she was pregnant- in October 2015.

In the verified complaint, Complainant alleged that she began work as a Nurse Practitioner at Respondent on March 16, 2015. Complainant alleged that on October 9, 2015, she notified Respondent that she was pregnant. Complainant alleged that after she told Respondent that she was pregnant, Respondent required her to perform additional work and, within a few weeks, terminated her. Complainant alleged that she was performing her work satisfactorily and was not told of any problems or issues until the day that she was terminated. Complainant asserts that she was discriminated against on the basis of pregnancy.

In an interview with DCR, Complainant said that she was recruited by Dr. Boxman to work as a Nurse Practitioner at Respondent. She said that at the time that she was hired, she entered

into a written employment contract with Respondent which provided, among other things, that Complainant would work four days per week, 8:00 AM to 6:00 PM, Monday, Tuesday, Wednesday and Friday, for a total of 40 hours per week. Complainant explained that Dr. Boxman does not see patients on Thursdays. Complainant told DCR that she often stayed much later than 6:00 PM and would go in on Thursdays to help complete reports that could not be completed during regular office hours or if the RN was off. Complainant told DCR that after her first week on the job Dr. Boxman told her that she would start to see patients on her own, but under supervision. Complainant said that everything was progressing well and that she was learning a lot.

Complainant told DCR that after she told Dr. Boxman that she was pregnant, Respondent's office manager [redacted], asked her if Dr. Boxman had spoken to her about seeing patients on Thursdays. According to Complainant [redacted] said that Dr. Boxman wanted her to start seeing patients for a half a day on Thursdays, explaining that it was necessary because of a lack of revenue, because he had to prepare for Complainant's maternity leave, and because the EEG technician had recently injured her wrist and was going to be out of work for a few weeks. Complainant said she was upset about the change of hours because she was already putting in over 40 hours per week. She also said that she was upset because Dr. Boxman never mentioned that she would have to work extra hours when she accepted the job and she noted that the additional hours were not contemplated in her employment contract. Complainant told DCR that she reminded [redacted] that she had a doctor's appointment on Thursday, October 26 and would not be in that day. Complainant told DCR that [redacted] told her that the new Thursday schedule would not begin until November.

Complainant told DCR that, on October 23, 2015, she explained to Dr. Boxman that she was very unhappy with his decision to schedule patients for her to see on Thursdays and asked if she could conduct the additional patient visits during the four days provided for in her employment contract. According to Complainant, Dr. Boxman said, "no," and was rude to her. She said Dr. Boxman told her that she should expect to work long hours and spend a lot of extra time in the office. Complainant explained to him that her contract said otherwise, and that she had been very flexible since she had started working, but adding a fifth regular workday was too much. Complainant said Dr. Boxman was not willing to renegotiate her contract or even sit down and discuss a plan for the future.

Complainant told DCR that after her encounter with Dr. Boxman, she was upset knowing that she had no choice but to start seeing patients on Thursdays in November in addition to her scheduled 40 hours. Complainant told DCR that, although she had gone to Dr. Boxman with her concerns, she never refused to work the extra hours.

Complainant told DCR that things were normal at work the following week. Complainant said she did not report to work on Thursday, October 29, 2015, because she had a doctor's appointment and was not expected to work Thursdays until November. Complainant told DCR that should would have gone in to work on October 29 had Respondent called and asked her to work.

Complainant told DCR that Respondent's Office Manager, [redacted] called her on October 29, 2015 and told her that Dr. Boxman was letting her go. According to Complainant, [redacted] said that Dr. Boxman had typed a long list of reasons for Complainant's termination. Complainant told DCR that [redacted] said that Dr. Boxman decided that he would pay Complainant two week's salary and that she would have health benefits for two more weeks, but that no severance was being offered.

According to Complainant, she asked [redacted] if she could sit down with Dr. Boxman one more time concerning the issues. [redacted] said that she would talk to him and get back to Complainant. Complainant said [redacted] sent her a text message at 2:30 p.m. stating that Dr. Boxman would not be available to speak to her and that Complainant needed to pick up her belongings from the office. DCR reviewed the text message from [redacted]t, which read, in part:

> …I've spoken to Dr. Boxman all day about you, and he's set on his decision. He said it has nothing to do with your pregnancy whatsoever. He knows you're unhappy and feels you're looking at other options….

Dr. Boxman refused DCR's request for an interview.

In an interview with DCR, [redacted] said that prior to being offered the job, Complainant advised Dr. Boxman that she planned to try to get pregnant during the first few months of her employment. [redacted] said that Dr. Boxman advised Complainant that this did not present a problem and that he was going to instruct [redacted] to pay Complainant her full salary while she was out on maternity leave.

[redacted] told DCR that within the next few months, Complainant was having performance problems. Respondent provided a list of Complainant's alleged deficiencies which listed:

1. Failure to commit to increasing her medical knowledge.
2. Leaving the office prior to all of the patients being seen.
3. Refusing to attend one-on-one teaching sessions with Dr. Boxman.
4. Engaging in and creating a hostile relationship with co-workers.
5. Disrupting the work performance of other employees.
6. Making critical comments about Dr. Boxman's medical and treatment plans.

[redacted] told DCR that Respondent made numerous efforts to address the performance problems, but that Complainant refused to improve her work performance and as such the decision was made to terminate her employment. [redacted] told DCR that Dr. Boxman expected Complainant to be in the office on Thursday October 29, 2015, the day that Complainant was terminated.

Complainant told DCR that none of the criticisms Dr. Boxman allegedly had about her were accurate and she had not be told of any of the purported deficiencies prior to the call from Ms. [redacted] on the day that she was fired. Complainant further stated that when [redacted] told her about the list of problems and her termination, she asked to speak directly with Dr. Boxman. She

said she received a text from [redacted] later that afternoon, saying Dr. Boxman would not be available to speak with her. This text was provided to DCR.

During the investigation, Respondent failed to provide DCR with any documentation or evidence to support Respondent's list of Complainant's alleged deficiencies. In addition, Dr. Boxman himself refused DCR's request for an interview. The only evidence that Respondent provided to show that Complainant had deficiencies sufficient to warrant her termination was the list that Dr. Boxman had [redacted] recite to Complainant on the day that she was fired over the phone.

In response to the evidence presented, Complainant asserted that she was convinced that she was discharged because Respondent viewed her pregnancy as a problem for its practice and that Respondent's mention of her pregnancy both in the text message from [redacted] and when changing the terms of her contract and demanding that she work extra hours because her pregnancy was going to cause a loss of revenue, as well as the timing of Dr. Boxman's abrupt change in attitude toward Complainant, evidence that fact.

Information obtained during the investigation was shared with Respondent, and prior to the conclusion of the investigation, Respondent was given an opportunity to submit additional information.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief" that the [LAD] was violated**.** Id." If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Id.

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the "terms, conditions or privileges of employment" based on pregnancy. N.J.S.A. 10:5-12(a).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on pregnancy. The investigation found no evidence of problems with or criticisms of Complainant's performance until soon after Respondent learned that Complainant was pregnant. Respondent submitted no evidence to support its assertion

that Complainant (1) failed to commit to increasing her medical knowledge, (2) left the office prior to all of the patients being seen, (3) refused to attend one-on-one teaching sessions with Dr. Boxman, (4) engaged in and created a hostile relationship with co-workers, (5) disrupted the work performance of other employees, or (6) made critical comments about Dr. Boxman's medical and treatment plans. On the contrary, Respondent's effort to increase Complainant's role in the practice by having her work additional hours and see more patients suggests that Respondent was pleased with her performance prior to her termination. Nor did Respondent submit any evidence showing that Complainant was made aware of any of the alleged problems and deficiencies prior to the day that she was terminated.

The investigation did find evidence to support Complainant's assertion that Dr. Boxman's attitude toward and treatment of her changed after she told him that she was pregnant and that he became rude and abrupt in his interactions with her. It appears that Dr. Boxman was motivated at least in part by Complainant's pregnancy in modifying her work schedule, and terminated her employment after Complainant expressed concern with the new schedule. Further, Respondent did not submit evidence that contradicts Complainant's assertion that she was told that her new schedule, which required her to work one additional day per week, would begin in November.

In this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988). Therefore, the Director finds probable cause to support Complainant's allegations of discrimination based on pregnancy.

Rachel Wainer Apter

Date: December 17, 2019

Rachel Wainer Apter, Director
NJ Division on Civil Rights